

**Letter of Findings Number: 08-0690P**  
**IFTA**  
**For Tax Years 2005-08**

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. IFTA–Audit Method.**

**Authority:** IFTA R1210.

Taxpayer protests the Department's fuel and mileage calculation method.

**II. Tax Administration–Negligence Penalty.**

**Authority:** IC § 6-8.1-10-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of interest and a ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a trucking company in Indiana. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for fuel tax imposed under the International Fuel Tax Agreement ("IFTA") for the tax years 2005 and 2006, along with penalties on the base taxes and interest for those two years plus 2007 and 2008. Taxpayer requested an administrative hearing to protest the imposition of IFTA taxes and penalties. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

**I. IFTA–Audit Method.**

**DISCUSSION**

Taxpayer protests the imposition of IFTA taxes for the tax years 2005 and 2006. The Department conducted an audit and determined that Taxpayer owed additional IFTA taxes for those years. Due to the volume of invoices involved, the Department based its decision on a sample and projection method. After the Department issued its audit report and proposed assessments, Taxpayer protested the imposition of some of the assessments for base tax.

Taxpayer argues that the fuel consumption calculations used in the audit determination were incorrect. Taxpayer explained that certain trucks were newer than others and would logically get better mileage than an older truck. Also, Taxpayer provided spreadsheet figures in support of its protest contending that some trucks got better mileage. Since better mileage means less fuel purchased, Taxpayer believes that the assessments should be lowered to its calculated figures.

The Department refers to IFTA R1210.300, which states in relevant part:

The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct, and in any case where the validity of the assessment is drawn into question, the burden shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive.

After review of the provided total sheets and documents, the Department cannot agree with Taxpayer. The Department understands Taxpayer's totals but is not able to verify them. The sample and projection method used by the Department was based on the records kept by Taxpayer. Any correction of this method would require a review of the total records for each truck by quarter and jurisdiction for all four quarters of 2005 and 2006. Taxpayer has not met the burden imposed by IFTA R1210.300.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration–Negligence Penalty.**

**DISCUSSION**

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to a penalty under [IC 6-8.1-10-2.1](#)(a). Taxpayer has affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c). The negligence penalty shall be waived.

#### **FINDING**

Taxpayer's protest is sustained.

#### **CONCLUSION**

Taxpayer is denied on Issue I. Taxpayer is sustained on Issue II.

*Posted: 07/29/2009 by Legislative Services Agency*  
An [html](#) version of this document.